



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

BENJAMIN HOLMES,
Plaintiff,

vs.

NANCY A. BERRYHILL,
Acting Commissioner of Social Security,
Defendant.

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CIVIL ACTION NO. 8:17-01385-MGL

**ORDER ADOPTING THE REPORT AND RECOMMENDATION AND DISMISSING
THE CASE WITHOUT PREJUDICE PURSUANT TO FED. R. CIV. P. 41(b)**

This is an appeal from a denial of social security benefits. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the case be dismissed without prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 31, 2017, but Plaintiff failed to file any objections to the Report. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

Notably, at the outset of the action, the Magistrate Judge directed Plaintiff to keep the Clerk of Court abreast of any address changes and warned him his “case may be dismissed for violating th[e] Order.” ECF No. 12 at 3; ECF No. 15 at 3. Nevertheless, inasmuch as the Post Office returned Plaintiff’s mail to the Clerk on September 12, 2017, marked “REFUSED,” RETURN TO SENDER,” “NO MAIL RECEPTACLE,” and “UNABLE TO FORWARD,” ECF No. 21, it appears Plaintiff has failed to follow the Magistrate Judge’s Orders regarding any change of address.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court the case is **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Signed this 14th day of September, 2017, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE